IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-3592

HECTOR JIMENEZ FACIO

Petitioner,

v.

JUAN BALTAZAR, Warden of the Aurora Contract Detention Facility, in his official capacity;
ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;
KRISTI NOEM, Secretary of U.S. Department of Homeland Security, in her official capacity; and
PAMELA BONDI, Attorney General of the United States, in her official capacity,

Respondents.

PETITIONER'S REPLY IN SUPPORT OF HABEAS CORPUS (ECF NO 1) AND ORDER TO SHOW CAUSE (ECF NO 10)

Petitioner, HECTOR JIMENEZ FACIO, by and through undersigned counsel, submits this reply in support of his Petition for Writ of Habeas Corpus (ECF No. 1) and the Court's Order to Show Cause (ECF No. 10). As explained below, the facts of Jimenez Facio's case follows those of countless others that this Court has found that they are properly detained under 8 U.S.C. § 1226. He therefore respectfully requests that the Court find he is detained under 8 U.S.C. § 1226(a), reject Respondents' novel interpretation that he is detained under 8 U.S.C. § 1225, and order Respondents to provide him a bond hearing under 8 U.S.C. § 1226(a) within seven (7) days of this Court's order.

INTRODUCTION

Respondents' novel interpretation of the civil immigration detention statutes, as laid out in the Board of Immigration Appeals' (BIA) precedential decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), contravenes the plain language and statutory framework of the Immigration and Nationality Act (INA), also codified as 8 U.S.C. As the Supreme Court explained in *Jennings v. Rodriguez*, 8 U.S.C. § 1226(a) and its authority to seek release on bond governs the detention of those, like Jimenez Facio, who are "already in the country" and are detained "pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). In contrast, § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry" primarily to noncitizens "seeking to enter the country." *Id.* at 287. Before Jimenez Facio filed this case, courts across the country, including this Court, have uniformly rejected Respondents' radical interpretation of the statute. *See Garcia Cortes v. Noem*, No. 25-cv-02677-CNS, 2025 WL 2652880, at *3 (D. Colo. Sept. 16, 2025).

Respondents' Response ignores all these decisions and instead presses the same arguments that have now been rejected dozens of times. *See Espinoza Ruiz v. Baltazar*, No. 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025); *Arauz v. Baltazar*, No. 1:25-cv-03260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025); *Nava Hernandez v. Baltazar, et al.*, No. 1:25-cv-03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Hernandez Vazquez v. Baltasar, et al.*, No. 1:25-cv-3049-GPG, ECF No. 22 (D. Colo. Oct. 23, 2025); *Loa Caballero v. Baltazar, et al.*, No. 1:25-cv-3120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Moya Pineda v. Baltasar, et al.*, No. 1:25-cv-2955-GPG, ECF No. 21 (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez v. Baltasar, et al.*, No. 1:25-cv-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); and *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880 (D. Colo. Sept. 16, 2025). This Court should

join the overwhelming consensus, grant this Petition (ECF No. 1), and order Respondents to provide Jimenez Facio with a bond hearing under 8 U.S.C. § 1226(a) and adjudicating his danger to the community and flight risk by a neutral Immigration Judge.

ARGUMENTS

I. JIMENEZ FACIO IS NOT SUBJECT TO 8 U.S.C. § 1225(b)(2) MANDATORY DETENTION.

Jimenez Facio is not subject to 8 U.S.C. § 1225's mandatory detention. First, as several courts have recently explained, § 1225 imposes three conditions that must be satisfied for § 1225(b)(2)(A) to apply and justify mandatory detention. *See Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), ---F. Supp. 3d---, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025). "[F]or section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Id.* (quoting *Martinez v. Hyde*, Civil Action No. 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025)); *see also* 8 U.S.C. § 1225(b)(2)(A). "Seeking" means "try[ing] to acquire or gain." Seeking, Merriam Webster Dictionary, https://www.merriam-webster.com/dictionary/seeking (last visited Dec. 8, 2025); *see also Rocky Mountain Wild v. Dallas*, 98 F.4th 1263, 1291 (10th Cir. 2024) ("Dictionary definitions are useful touchstones to determine the 'ordinary meaning' of an undefined statutory term.") (quotation omitted)). And "admission" is defined in the INA as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

The plain meaning of the phrase "seeking admission" requires that the applicant must be presently and actively seeking lawful entry into the United States. The use of the present participle in § 1225(b)(2)(A) "implies action—something that is currently occurring, and in this instance,

would most logically occur at the border upon inspection." *Lopez-Campos v. Raycraft*, ---F. Supp. 3d---, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025). Simply put, "[n]oncitizens who are just 'present' in the country ..., who have been here for years upon years and never proceeded to obtain any form of citizenship[,] ... are not 'seeking' admission" under § 1225(b)(2)(A). *Lopez-Campos*, 2025 WL 2496379, at *6.

Respondents argue that an "applicant for admission" and a person "seeking admission" are one and the same. However, the "presumption of consistent usage and the meaningful-variation canon" instructs that "[i]n a given statute, the same term usually has the same meaning and different terms usually have different meanings." *Pulsifer v. United States*, 601 U.S. 124, 149 (2024). "[B]y treating the terms 'applicant for admission' and 'alien seeking admission' as synonymous, Respondents' interpretation violates the principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Lopez Benitez*, 2025 WL 2371588, at *6.

Moreover, courts avoid interpreting statutes in a way that "makes any part superfluous." *Fuller v. Norton*, 86 F.3d 1016, 1024 (10th Cir. 1996). If *all* applicants for admission are necessarily "seeking admission" under the statute, then the "seeking admission" language in § 1225(b)(2)(A) would be redundant and superfluous. *See* 8 U.S.C. § 1225(b)(2)(A) ("in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a [removal] proceeding"). If all "applicants for admission" were "seeking admission" to the country, "there would be no need to include the phrase 'seeking admission' in the statute." *Lopez Benitez*, 2025 WL 2371588, at *6; *Hernandez Marcelo v. Trump*, No. _ F. Supp. 3d _, 2025 WL 2741230, at *7 (S.D. Iowa Sept. 10, 2025)

(collecting cases ruling similarly). "The canon against surplusage indicates that [courts] generally must give effect to all statutory provisions, so that no part will be inoperative or superfluous—each phrase must have distinct meaning." *Chevron Mining Inc. v. United States*, 863 F.3d 1261, 1283 n.15 (10th Cir. 2017).

Adopting Respondents' interpretation would also render other portions of the INA superfluous. Earlier this year, Congress amended the INA to create a new exception to § 1226's discretionary detention scheme; this new provision "mandates detention for non-citizens who meet certain criminal *and* inadmissibility criteria." *Martinez*, 2025 WL 2084238, at *7 (emphasis added); *see also* 8 U.S.C. § 1226(c)(1)(E). "[I]f, as the Government argue[s] . . ., a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect." *Martinez*, 2025 WL 2084238, at *7; *see also Lopez Benitez*, 2025 WL 2371588, at *7 (reaching the same conclusion). Not only is Respondents' interpretation contrary to the plain text of the statute, their position would also require the Court to disregard well-settled principles of statutory interpretation.

Respondents also rely on the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), but that decision cannot overcome the statute's plain text or the uniform weight of federal case law rejecting Respondents' position. The Court is not bound by the decision in *Yajure Hurtado* and should not give deference to the agency's interpretation of the statute. *See Loper Bright Enters v. Raimondo*, 144 S. Ct. 2244, 2273 (2024). The agency's interpretation in *Yajure Hurtado* is unpersuasive especially given that it represents a departure from longstanding agency practice. *See Sales Ambrocio v. Noem*, No. 4:25CV3226 (D. Neb. Nov. 25, 2025). Here, the relevant statutory terms—"seeking admission," "admission," and the structure dividing § 1225 from § 1226—are unambiguous. *Yajure Hurtado*'s contrary reading is not entitled to deference

and has been rejected by federal courts, including this Court. *See Garcia Cortes v. Noem*, No. 25-cv-02677-CNS, 2025 WL 2652880, at *3 (D. Colo. Sept. 16, 2025).

Jimenez Facio has been present in the United States since approximately April 1997. ECF No. 1 at Attachment A. Therefore, notwithstanding any lack of lawful status, Jimenez Facio was not seeking lawful entry into the United States at the time he was detained—he was already here. He was thus not "seeking admission" and is not subject to § 1225(b)(2)(A)'s mandatory detention provision. *See Lepe v. Andrews*, --- F. Supp. 3d ----, 2025 WL 2716910, at *5 (E.D. Cal. Sept. 23, 2025) ("[P]etitioner is not actively 'seeking' 'lawful entry' because he already *entered* the United States—thirty-two years ago. If anything, petitioner is seeking to *remain* in the United States.").

Under the plain meaning of the statute, traditional canons of statutory construction, and the consistent approach of courts across the country, § 1225(b)(2)(A)'s mandatory detention provision does not apply to long-term residents like Jimenez Facio because he is not "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A), making Respondents' continued detention unlawful.

II. JIMENEZ FACIO IS SUBJECT TO 8 U.S.C. § 1226(a).

Although the plain text of the statute demonstrates that Jimenez Facio is not detained under § 1225, the government's own treatment of Jimenez Facio, which Respondents failed to contend with, further support the finding that he is detained under 8 U.S.C. § 1226(a).

In Jimenez Facio's Notice to Appear, the issuing DHS officer did not designate him as an "arriving alien," which "is the active language used to define the scope of section 1225(b)(2)(A) and its implementing regulation." ECF No. 1 at Attachment A; *Martinez*, 2025 WL 2084238, at *6; *see also* 8 C.F.R. § 253.3(c)(1). DHS's Notice of Custody Determination states that Jimenez

Facio is being detained "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act." ECF No. 1 at Attachment B. Therefore, the Government's own detention paperwork suggests that Jimenez Facio is detained under § 1226, not § 1225. *Lopez Benitez*, 2025 WL 2371588, at *4 ("Respondents' own exhibits unequivocally establish that Mr. Lopez Benitez was detained pursuant to Respondents' discretionary authority under § 1226(a)). Additionally, the warrant for his arrest was explicitly authorized pursuant to INA § 236. *See J.O.E. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2466670, at *8 (D. Minn. Aug. 27, 2025) (ordering bond hearing where the petitioner was detained under § 236 and the respondents "[did] not argue that they exercised some available procedural right to change the legal basis of [the petitioner's] arrest and detention" or "cite authority supporting the idea that they possessed that unilateral right").

Therefore, the plain language of the statute in conjunction with Respondents treatment of Jimenez Facio establishes that his detention is pursuant to 8 U.S.C. § 1226(a).

III. RELIEF REQUESTED

Once this Court determines that Jimenez Facio is properly detained under 8 U.S.C. § 1226(a), it follows that his ongoing detention without a bond hearing is unlawful. Jimenez Facio sought a bond hearing before the Immigration Judge on July 18, 2025. At that hearing, rather than evaluating his flight risk and danger factors under § 1226(a), the IJ for the first time determined that he was subject to INA § 235 and therefore ineligible for bond. That determination rested on the same erroneous statutory theory this Court and others have repeatedly rejected.

Because Jimenez Facio is detained under § 1226(a), he is entitled to the bond procedures that accompany that provision including a prompt, individualized bond hearing before a neutral adjudicator, consideration of whether he poses a danger to the community or presents a flight risk,

and the opportunity to be released on reasonable bond if the Government cannot meet its burden of demonstrating that continued detention is necessary.

This Court should therefore grant the Petition and order Respondents to provide Jimenez Facio a bond hearing under § 1226(a) within seven (7) days of the Court's order.

CONCLUSION

Respondents' attempt to recast Jimenez Facio as a mandatory detention § 1225(b)(2) detainee is irreconcilable with the INA's text, structure, and purpose, as well as the weight of federal case law—including decisions from this Court—rejecting the same theory. Section 1225(b)(2)(A) applies only to noncitizens who are *presently seeking admission* at the border or a port of entry and whom an examining immigration officer has determined are not clearly and beyond a doubt entitled to admission. It does not reach long-term residents who have lived in the interior of the United States for decades and who are now defending themselves in removal proceedings.

By contrast, § 1226(a) is expressly designed to govern the detention of noncitizens "already in the country" who are detained "pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289. That is precisely Jimenez Facio's situation. The statute's plain terms, the Supreme Court's interpretation, and Respondents' own detention paperwork—including the Notice to Appear, Notice of Custody Determination, and arrest warrant issued under INA § 236—all confirm that he is detained under § 1226(a), not § 1225.

Under § 1226(a), detention is discretionary and accompanied by a bond mechanism that allows for individualized consideration of flight risk and danger to the community. The Immigration Judge's decision to foreclose any bond hearing by reclassifying Jimenez Facio as a § 1225 detainee impermissibly sidesteps the statutory framework and deprives him of the

procedures Congress provided. Allowing such a maneuver would invite arbitrary toggling between detention regimes, frustrate the INA's carefully calibrated structure, and expand mandatory detention far beyond the circumstances Congress authorized.

For these reasons, Jimenez Facio respectfully requests that this Court declare that he is detained under 8 U.S.C. § 1226(a), not § 1225(b)(2), reject Respondents' contrary interpretation of the INA as inconsistent with the statute's text, structure, and governing precedent, and order Respondents to provide Jimenez Facio an individualized bond hearing within seven (7) days of the Court's order. Such relief would align this Court with the overwhelming consensus of federal courts that have considered this question and ensure that Jimenez Facio is afforded the procedures he is entitled to under 8 U.S.C. § 1226.

Dated this 9th day of December 2025.

Respectfully submitted,

/s/ Skylar M. Larson
Skylar M. Larson, Esq.
8275 E. 11th Ave. # 200176
Denver, CO 80220
Tel: (970) 692-3156
Email: skylarmlarsonesq@gmail.com
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2025, I electronically filed the foregoing **Petitioner's Reply in Support of Petition for Writ of Habeas Corpus (ECF No. 1) and Order to Show Cause (ECF No. 10)** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Leslie Schulze
U.S. Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Leslie.schulze@usdoj.gov

/s/ Skylar M. Larson
Skylar M. Larson, Esq.

ATTORNEY FOR PETITIONER